

Handbook Questions with Steve Anderson's replies 11/02/09

- 1) Page 18. m. You may not, after leaving public service, take a job involving public contracts or any other particular matter in which you participated as a public employee.

Question: isn't there a time limit on this restriction ?

Answer: There are four prohibitions in the first paragraph of G.L. c. 268A, § 18(a) regarding former municipal employees; two have time limits and two do not. There is no time limit on a former employee being able to perform post-town-employment services "in connection with any particular matter in which the city or town is a party or has a direct and substantial interest and in which he participated as a municipal employee while so employed." This prohibition is perpetual. Thus, as amended by St. 2009, c. 28, § 77 effective September 29, 2009, the Act provides as follows (emphasis added):

- (a) A former municipal employee who knowingly acts as agent or attorney for or receives compensation, directly or indirectly from anyone other than the same city or town in connection with any particular matter in which the city or town is a party or has a direct and substantial interest and in which he participated as a municipal employee while so employed, or
 - (b) a former municipal employee who, within one year after his last employment has ceased, appears personally before any agency of the city or town as agent or attorney for anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and which was under his official responsibility as a municipal employee at any time within a period of two years prior to the termination of his employment, or
 - (c) a partner of a former municipal employee who knowingly engages, during a period of one year following the termination of the latter's employment by the city or town, in any activity in which the former municipal employee is himself prohibited from engaging by clause (a), or
 - (d) a partner of a municipal employee who knowingly acts as agent or attorney for anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and in which the municipal employee participates or has participated as a municipal employee or which is the subject of his official responsibility,
- shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

- 2) We occasionally create local committees to consider local issues. For example, the majority of the WANT committee lives in the Flint / Tuttle neighborhood and the committee will be addressing the issue of how to handle wastewater issues. Everyone in the neighborhood has a conflict of interest of one sort or another but the neighborhood must be involved in finding the solution. This will also be an issue if we form a committee of W. Acton stakeholders to consider

How can we establish committees of the primary stakeholders without running into problems with conflict of interest law ?

Answer: This question arises under G.L. c. 268A, § 19 of the State Ethics Act, the provision concerning having a “financial interest” in the particular matter at issue. Section 19(b) creates two safe harbors which may apply here:

It shall not be a violation of this section (1) if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee, or ... (3) if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.

It is probably prudent for each member of a committee affected by this “stakeholder conflict” to file the § 19(b)(1) disclosure form and get the Selectmen’s sign-off before participating in the committee. It is probably also prudent for each such member to file the § 23(b)(3) “appearance of impropriety” disclosure form at the same time (which does not require the Selectmen’s sign-off). These forms are available on the Ethics Commission’s website and we can provide copies on request.

3) Which boards are required to hold public hearings? BoS, Planning Board, ZBA. Others ?? Possibly ConsCom or Board of Health ?? HDC ?

Answer: All boards that act in a quasi-judicial capacity to determine the rights of a particular party in a particular matter are required to hold public hearings. This includes all of the above-listed boards, as well as any other boards acting in such a capacity. In addition, statutes frequently require a public hearing to be held in certain circumstances (such as planning board public hearings for zoning changes).